

From: Ryan Williams
To: Microsoft ATR
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Subject: Unacceptable

I have read the settlement between the United States Government and Microsoft, and I do not find it acceptable.

The settlement does not even begin to address the problem at hand: the illegal operating system monopoly Microsoft holds. It appears instead to be an almost-clever series of loopholes which may permit continued illegal behavior.

Let me give some illustrations:

III.C.5 . "Presenting in the initial boot sequence its own IAP offer provided that the OEM complies with reasonable technical specifications established by Microsoft, including a requirement that the end user be returned to the initial boot sequence upon the conclusion of any such offer."

- This was written either by a novice, or by an individual with Microsoft's interests at heart. Software does not exist but for the cooperation of those who write it. Most "technical specifications" exist as agreements between programmers (many as RFCs). Consequently, if Microsoft chooses not to cooperate, it has the ability to change its "technical specifications" so that other companies cannot comply and still assert that they are within the bounds of "reasonableness". Consequently this clause holds no water and appears to be cosmetic.

III.C.3 "Launching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware if Microsoft Middleware that provides similar functionality would otherwise be launched automatically at that time, provided that any such Non-Microsoft Middleware displays on the desktop no user interface or a user interface of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware."

- This essentially allows OEMs to use non-Microsoft middleware only if such middleware apes what Microsoft middleware does already. I can think of no poorer excuse for "competitiveness."

III.J.1 "Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of anti-piracy..."

- 1) It is well known in the security industry that open documentation (indeed - revelation of source code) leads to a more secure product, not less. The idea that revealing some layer of a Microsoft protocol would compromise its security is perfectly fraudulent. I could explicate this point further, but I feel that it is unnecessary since this information is widely known (and must have been ignored in the writing of

this settlement).

2) On a more disturbing note, this allows Microsoft the ability to refuse disclosure of any of its protocols for "security reasons", real or not. Since other companies require these protocols to interoperate with Microsoft's products, this is in effect giving Microsoft the ability to guarantee that only Microsoft may make middleware for its operating system. In a competitive situation, this would be disadvantageous to Microsoft, since middleware makers would simply switch to another operating system. In this world where Microsoft's operating system overwhelms the market, middleware producers will go out of business if they switch to another operating system.

All these references to "menus" and "icons" are disturbing when it is certainly conceivable that these visual aids will disappear and change over time as Microsoft's product evolves (perhaps they will disappear precisely to circumvent this settlement's stipulation).

At this moment, there are very few OEMs that can carry on business without a contract to distribute Microsoft's operating system. As a consequence, none of them will have an alternative but to sign any license that Microsoft cares to write. Microsoft doesn't need to make their licenses "reasonable" nor "non-discriminatory" because it would be financially impossible for an OEM to contest one. This situation is subject to change, but without real, visible constraints, Microsoft will maintain a stranglehold on its Covered OEMs.

The fundamental problem with Microsoft's situation - that it has illegally maintained its monopoly and stifled competition, is not given much consideration. Much more of the volume of the settlement is devoted to appointing "Compliance Officers" and "TCs" than was spent on the rights of the OEMs to choose a non-Microsoft product. Nor does the settlement hint at how non-Microsoft products are to gain a foothold enough to compete at all.

The fundamental problem here is that Microsoft is eager and capable of leveraging its dominant share in the Operating System market into an anticompetitive advantage for its other products (and further extend its monopoly at the same time). The settlement needs to address that, rather than grant piddling "exceptions" for other software companies.

-RYaN

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